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DOUGLAS G. BERGERON, JAMES C. CASTLE, LESLIE G.
12 DENEND, ALEX W. (PETE) HART, ROBERT B. HENSKE,
EITAN RAFF, CHARLES R. RINEHART, COLLIN E. ROCHE,
13 CRAIG A. BONDY, and BARRY ZWARENSTEIN

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 CHARLES R. KING, derivatively on behalf
18 of VERIFONE HOLDINGS, INC.,

19 Plaintiff,

20 v.

21 DOUGLAS G. BERGERON, JAMES C.
CASTLE, LESLIE G. DENEND, ALEX W.
22 (PETE) HART, ROBERT B. HENSKE,
EITAN RAFF, CHARLES R. RINEHART,
23 COLLIN E. ROCHE, CRAIG A. BONDY,
and BARRY ZWARENSTEIN,

24 Defendants,

25 -and-

26 VERIFONE HOLDINGS, INC.,

27 Nominal Defendant.
28

Case No. CV 07-6347 MHP

**DEFENDANTS' STATEMENT IN
RESPONSE TO PLAINTIFFS' MOTIONS
TO CONSOLIDATE CASES AND APPOINT
LEAD PLAINTIFF AND LEAD COUNSEL**

Judge: The Hon. Marilyn H. Patel
Courtroom: 15

This case is related to IN RE VERIFONE
HOLDINGS, INC. SECURITIES
LITIGATION, Master File No. C 07-6140
MHP, HILBORN v. BERGERON ET AL.,
Case No. CV 08-1132 MHP, PATEL v.
BERGERON ET AL., Case No. 08-1133
MHP, and LEMMOND ET AL. v.
BERGERON ET AL., Case No. CV 08-1301
MHP.

ARTHUR HILBORN, derivatively on behalf
of Nominal Defendant, VERIFONE
HOLDINGS, INC.,

Plaintiff,

v.

Douglas G. Bergeron, JESSE ADAMS,
ISAAC ANGEL, WILLIAM ATKINSON,
CRAIG A. BONDY, JAMES C. CASTLE,
LESLIE G. DENEND, ALEX W. HART,
ROBERT B. HENSKE, CHARLES R.
RINEHART, COLLIN E. ROCHE,
ELMORE WALLER, and BARRY
ZWARENSTEIN,

Defendants,

-and-

VERIFONE HOLDINGS, INC.,

Nominal Defendant.

Case No. CV 08-1132 MHP

Judge: The Hon. Marilyn H. Patel
Courtroom: 15

ARUNBHAI PATEL, derivatively on behalf
of Nominal Defendant, VERIFONE
HOLDINGS, INC.,

Plaintiff,

v.

Douglas G. Bergeron, JESSE ADAMS,
ISAAC ANGEL, WILLIAM ATKINSON,
CRAIG A. BONDY, JAMES C. CASTLE,
LESLIE G. DENEND, ALEX W. HART,
ROBERT B. HENSKE, CHARLES R.
RINEHART, COLLIN E. ROCHE,
ELMORE WALLER, and BARRY
ZWARENSTEIN,

Defendants,

-and-

VERIFONE HOLDINGS, INC.,

Nominal Defendant.

Case No. CV 08-1133 MHP

Judge: The Hon. Marilyn H. Patel
Courtroom: 15

MARY LEMMOND and WANDELL
EVERETT, derivatively on behalf of
VeriFone Holdings, Inc.,

Case No. CV 08-1301 MHP

Judge: The Hon. Marilyn H. Patel
Courtroom: 15

Plaintiffs,

v.

DOUGLAS G. BERGERON, BARRY
ZWAREENSTEIN, JESSE ADAMS, ISAAC
ANGEL, ELMORE WALLER, COLLIN E.
ROCHE, JAMES C. CASTLE, LESLIE G.
DENEND, ALEX W. HART, ROBERT B.
HENSKE, CHARLES R. RINEHART,
EITAN RAFF, WILLIAM G. ATKINSON,
CRAIG A. BONDY, GTCR GOLDBERGER,
RAUNER, LLC, and DOES 1-25, inclusive,

Defendants,

-and-

VERIFONE HOLDINGS, INC., a Delaware
Corporation,

Nominal Defendant.

1 Defendants file this brief Statement in response to the motions filed by Plaintiffs King,
2 Patel and Lemmond *et al.* to consolidate the four related shareholder derivative actions and appoint a
3 lead plaintiff and lead counsel. Defendants file this statement to support the consolidation and to concur
4 in the briefing schedule set out in Plaintiffs Lemmond and Everett's [Proposed] Order Granting
5 Plaintiffs Lemmond and Everett's Cross-Motion to Consolidate Cases and Appoint Lead Counsel and
6 Denying Motions of Plaintiffs King and Patel (Case No. CV 07-6347 MHP, Docket No. 23).

7 The arguments set forth in the various motions for the consolidation of these four cases
8 into a single putative derivative case related to the December 3, 2007 restatement announcement by
9 VeriFone Holdings, Inc. ("VeriFone") are essentially inarguable. The efficiencies of having the four
10 cases consolidated into one are manifest and the potential for inefficiency and inconsistency if four
11 different plaintiffs are allowed separately to prosecute claims purportedly in the name of VeriFone is
12 substantial. Accordingly, Defendants agree that these cases ought to be consolidated.

13 Defendants also believe that, of the competing briefing schedules proposed by the various
14 Plaintiffs, the one proposed by Plaintiffs Lemmond and Everett is far and away the preferable one. That
15 schedule would, among other things, make Defendants' answer or other response to an amended
16 complaint in the consolidated derivative actions due within thirty (30) days of the entry of a ruling and
17 order by this Court concerning Defendants' motion to dismiss the consolidated amended complaint
18 expected to be filed in the related consolidated securities class action cases, *In re VeriFone Holdings,*
19 *Inc. Securities Litigation*, Master File No. C 07-6140. Defendants believe that this schedule —
20 consistent with the purposes of the Private Securities Litigation Reform Act (PSLRA) and the Securities
21 Litigation Uniform Standards Act (SLUSA) — appropriately sets the timing of the derivative actions to
22 correspond with the federal securities class actions and avoids further unnecessary litigation until the
23 consolidated amended complaint survives the threshold challenge of Defendants' motion to dismiss.

24 Defendants' agreement that litigation in these matters should be coordinated with the
25 securities fraud cases ought not to be construed as indicating any lack of confidence by Defendants with
26 respect to the issues that will be litigated in the derivative cases at the appropriate time. Indeed, at the
27 appropriate time, Defendants will have much to say about the failings of the complaints filed in these
28 four actions. In particular, each of the complaints alleges (1) that the asserted claims are appropriately

brought as derivative claims on behalf of VeriFone, and (2) that Plaintiffs' failure to make a demand on VeriFone's Board of Directors is excused on the basis of futility because, among other reasons, the complaints allege claims for breaches of fiduciary duty against VeriFone's directors, VeriFone's directors received compensation for serving on VeriFone's Board, and a minority of VeriFone's directors and a minority of the Audit Committee members sold portions of their VeriFone shares during the alleged relevant periods. (*See King* Compl. 32-41, Case No. CV 07-6347 MHP, Docket No. 1; *Hilborn* Compl. 19-20, Case No. CV 08-1132 MHP, Docket No. 1; *Patel* Compl. 19-20, Case No. CV 08-1133 MHP, Docket No. 1; *Lemmond et al.* Compl. 39-46, Case No. CV 08-1301 MHP, Docket No. 1.) Plaintiffs' demand-futility allegations, in particular, cannot withstand scrutiny — because demand was neither made nor excused, the cases should simply be dismissed. But rather than raise them now in response to several complaints, Defendants will assert these challenges in a motion directed against a consolidated complaint. Defendants also presently express no opinion as to the assertions in Plaintiffs King's, Patel's and Lemmond *et al.*'s motions as to their suitability as derivative plaintiffs, but will do so at the appropriate time once a consolidated complaint has been filed.

Date: April 14, 2008

/s/ Brendan P. Cullen

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